

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

MARK BIROSHAK, et al., :
Plaintiffs, :
vs. : Case No.: C-1-01-0300
THE CITY OF HAMILTON, et al., :
Defendants. :

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DEPONENT: LEE BRIAN BUCHANAN
DATE: SEPTEMBER 17, 2003

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TERESA A. MOORE,
COURT REPORTER

BARLOW REPORTING & VIDEO SERVICES
333 Madison Avenue
Covington, Kentucky 41011
(859) 261-8440

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1 Police, that's who.
 2 Q Did you play any part in the investigation
 3 phase of the operation in May of 1999, that resulted
 4 in a number of search warrants being executed?
 5 A No, sir.
 6 Q Was your involvement solely as a member of
 7 the SWAT team?
 8 A Yes.
 9 Q What were you assigned to do at the 922
 10 Vine Street residence, on May 17th of '99?
 11 A On the front of the house at 922 Vine
 12 Street, first floor, right-hand side window, to
 13 break out the window with a tool, to open the window
 14 to allow another officer I was with to cover through
 15 the window with a weapon. That was the -- that was
 16 my assigned duty, to be a rake-and-break officer.
 17 Q The rake-and-break, did that occur about
 18 the same time as the battering of the door?
 19 A Right around the same time, within --
 20 within a few seconds.
 21 Q I take it, then, that you're the officer
 22 that broke the fish tank?
 23 A Didn't know it at the time. It was behind
 24 the curtain. But, yes, sir, that would be me.
 25 Q I understand that was unintentional

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1 because it was obscured by the curtain; correct?
 2 A Yes, sir.
 3 Q Now, after the front window was breaked
 4 and raked -- that's grammatically wrong -- what role
 5 did you have?
 6 A Once we -- once you're the break-and-rake
 7 officer and you clear that glass, since you don't
 8 have a weapon to protect yourself in your hand, you
 9 lean up against the wall there while the other
 10 officer with the weapon covers you and himself
 11 through the window. My duties stopped at that
 12 point.
 13 Q Did you then leave the premises?
 14 A No, not immediately.
 15 Q What did you do next?
 16 A Stood there. A few seconds after the
 17 rake-and-break, a dog came out of the second-story
 18 window up and behind myself, three or four feet
 19 behind me, came out -- dove out the window and
 20 landed behind me.
 21 Q Did you see the dog exit the window?
 22 A No.
 23 Q Did you see the dog land?
 24 A No.
 25 Q Did the dog break out the window?

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1 A I'm not sure if there was a screen or a
 2 window, or whatever. But it came out the
 3 second-story window.
 4 Q Was that shortly after the flash-bang
 5 device had been deployed?
 6 A The dog was upstairs, so I'm assuming so.
 7 MR. WEISENFELDER: Well, if you know.
 8 Okay? If you know, fine. If it's in close
 9 proximity, fine. But don't assume. Okay?
 10 Q You told me that the rake-and-break was
 11 done within a few seconds of the entry; right?
 12 A Yes, sir, best of my knowledge.
 13 Q It's standard practice to deploy the
 14 flash-bang device immediately after a door is
 15 breached; right?
 16 A Depending on the circumstances.
 17 Q If you were going to use it, that's when
 18 it would be used?
 19 A Upon entry, yes.
 20 Q Upon entry. Did the dog exit the
 21 second-story window after the entry had been
 22 breached?
 23 A After the entry had been made on the first
 24 floor, yes.
 25 Q Do you recall there being a flash-bang

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1 unit deployed that day, at that residence?
 2 A Yes.
 3 Q So, what did you do when the dog came down
 4 from the second story, out the window?
 5 A I didn't initially see him, wearing
 6 hearing protection and a helmet, with it being to my
 7 back. I felt a thud on the ground behind me, but
 8 didn't realize what that was. The other officer who
 9 was covering me with a weapon could see over my
 10 shoulder. And I could see an expression on his
 11 face, and he mouthed the word, dog, dog. And I
 12 turned. And when I turned around, there -- there is
 13 this dog within a few feet of me, behind me.
 14 Q What was the dog doing?
 15 A Getting up and growling and lunging.
 16 Q Did it -- getting up and growling and
 17 lunging. Were its paws all on the ground, or not?
 18 A All on the ground.
 19 Q So, it wasn't lunging?
 20 A It was back feet down, front feet forward,
 21 coming up.
 22 Q You're indicating that it was ready to
 23 spring?
 24 A Yes.
 25 Q That's what it looked like to you?

1 A Yes.

2 Q Did you perceive the dog to be a threat of
3 some sort?

4 A Yes.

5 Q In those situations, then, would SWAT
6 procedure be to shoot the dog?

7 A Yes.

8 Q Do you have any knowledge as to why the
9 dog was reacting that way?

10 A No. The first time I saw the dog or knew
11 anything about the dog was when I turned around.

12 Q So, are you one of the officers who then
13 shot the dog?

14 A Yes, sir.

15 Q How many rounds?

16 A I shot two. He went down, got back up. I
17 shot two more, realizing it was having no effect.

18 Q Was this your side arm?

19 A Yes.

20 Q Any other officer fire at the dog?

21 A Yes.

22 Q Who?

23 A The next one after me would have been
24 Officer Waldeck -- that's Detective Waldeck -- who
25 was the officer who initially had -- was covering me

1 at that window. He then stepped up and fired a
2 couple of shots. I'm not sure exactly how many. A
3 couple of shots, maybe. The dog was still mobile.
4 And, at that point, both of us realizing that we
5 didn't need to be continuing to shoot at the dog,
6 the dog may go mobile and our weapons were not
7 having the effect that we wanted to put him down.
8 We called for Lieutenant Scrimizzi, who we had
9 noticed was on the front porch with a shotgun, more
10 powerful weapon, to come out and put the dog down.

11 Q Did he do so with the shotgun?

12 A Yes, sir.

13 Q It's your recollection, he was outside on
14 the porch with the shotgun?

15 A In the -- near the front doorway. We --
16 we called and called and called. And since we were
17 in the front of the house on the corner, our vision
18 is back over both of our right shoulders looking
19 towards the porch. We're calling that direction,
20 and that's where he stepped off of. If he was in
21 the living room or porch, we know that he stepped
22 off the porch. We don't know where he was before
23 then.

24 Q While you're doing this, is there anybody
25 providing cover of that front window?

1 A No, we were out -- we were out and away
2 from it at this point.

3 Q Did you enter the premises?

4 A No.

5 Q Did you take part in the search?

6 A No.

7 Q Did you see the residents of the house?

8 A No. I didn't even know there were
9 anybody -- didn't know anybody else, other than the
10 officers inside the house. I never saw anybody
11 inside of there. The officers are the only ones I
12 saw come out.

13 Q Did you see any children?

14 A No, sir.

15 Q At some point did you learn that there
16 were two young children there?

17 A No, I -- we were -- I was never told
18 directly.

19 Q Did you go to the debriefing?

20 A Yes, sir.

21 Q Was there a discussion at the debriefing
22 about who had been found in the house?

23 A Yes, family members. The person we were
24 looking for was not there.

25 Q Who was the person you were looking for?

1 A I believe the last name started with a B,
2 Blankenship.

3 Q Was it your recollection that the person
4 you were looking for was Joe Blankenship?

5 A That sounds correct.

6 Q At the debriefing, the discussion was that
7 Mr. Blankenship had not been there when you went to
8 find him?

9 A Yes, sir.

10 Q Was there discussion about any other
11 family members who had been present?

12 A Grandparents, maybe.

13 Q Yes.

14 A That's -- that's what I remember.

15 Q Do you recall learning, at some point in
16 time, that Blankenship was in the Butler County
17 Jail?

18 A Yes, I believe -- yes, later that day.

19 Q Does the City of Hamilton Police
20 Department have a way to access records of prisoners
21 at the jail?

22 A I'm not sure.

23 Q Do you have a way of running somebody
24 through your systems, to determine whether they're
25 in custody anywhere?